



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 13883616

Date: MAR. 2, 2021

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, an actor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition concluding that the Petitioner did not establish, as required, that she meets at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we conclude that the Petitioner has not met this burden. Accordingly, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

The Petitioner is an actor who works in film and television productions. The record reflects that she worked as a [REDACTED] in Canada prior to transitioning to an acting career. She relocated to the United States in 2014 and is a member of the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) and Screen Actors Guild - American Federation of Television and Radio Artists (SAG-AFTRA).

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims to meet seven of these ten criteria, summarized below:

- (iii), Published materials in professional publications or major media;
- (iv), Judging the work of others
- (v), Original contributions of major significance in the field;
- (vii), Display of her work at artistic exhibitions or showcases;
- (viii), Leading or critical roles for organizations with a distinguished reputation;
- (ix), High salary or other significantly high remuneration; and
- (x), Commercial successes in the performing arts.

The Director concluded that the Petitioner met only one of these seven criteria, relating to judging the work of others in her field. The record reflects that the Petitioner was a member of the [REDACTED] [REDACTED] Nominating Committee for the 25th Annual Screen Actors Guild (SAG) Awards in 2018. Based on the evidence provided regarding the SAG Awards nomination process, we agree with the Director that the Petitioner has met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner contends that the Director's decision contains multiple errors and oversights and asserts that she meets six additional criteria, which we will discuss below. After reviewing all the evidence in the record, we conclude that the Petitioner has met a second criterion, relating to the display of her work at artistic exhibitions or showcases. However, she has not established, as required, that she satisfies at least three of the ten evidentiary criteria for this classification.

*Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)*

The Petitioner submitted copies of articles from various Canadian print and online publications. The Director determined that none of the submitted articles meet all requirements set forth in this regulation. The Director observed that two of the articles are about the Petitioner and relate to her work as an actor, but found insufficient evidence to establish that the articles, published by [redacted] magazine and actorsentertainment.com, respectively, appeared in professional, major trade or major media publications. He further noted that many of the articles were published in the late 1990s and early 2000s when the Petitioner was working as a [redacted] for a Canadian television station serving the [redacted] area. The Director classified some of this evidence as "local media" and determined that these articles do not relate to the Petitioner's work in the field for which classification is sought (in this case, acting). Finally, the Director noted that some of the submitted articles only briefly mention the Petitioner and are therefore not "about her" while other articles did not include the author of the material as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner maintains that the Director did not provide sufficient explanation to support his determination that she did not satisfy this criterion. She states, for example, that the Director did not identify which articles were deemed to be "local media," specify which articles were lacking information regarding the author, or address why the information she provided regarding the circulation statistics for various publications was insufficient to establish that they are "major media." The Petitioner also contends that the Director should have given full consideration to older articles that relate to her work as a [redacted], noting that her career in [redacted] garnered her recognition that allowed her to successfully transition to [redacted] acting roles.

Turning to the submitted evidence, we acknowledge that both the [redacted] magazine and actorsentertainment.com articles are about the Petitioner and relate to her work as an actor. The article from actorsentertainment.com (which includes an embedded interview on the website's *ActorsE Chat* show) was accompanied by a screenshot from website.informer.com indicating that the website has 267 daily visitors, 534 daily page views and an "Alexa Rank" of 4,967,327. The article from [redacted] was not accompanied by any information regarding the magazine, its intended audience, or its circulation or distribution statistics in comparison to other publications, information which the Petitioner maintains she has been unable to obtain.<sup>1</sup>

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<sup>1</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that evidence of published material in

In response to the Director's request for evidence (RFE), the Petitioner submitted a screenshot from actorsentertainment.com indicating that its *ActorsE Chat* streaming show has over 1500 episodes and over 6.9 million viewers. The Petitioner submitted an article from *Deadline* which provides ratings for ABC network's Thursday night lineup, showing that its top-rated show had 6.48 million viewers. She stated that "if this is considered a top major program then it stands to reason that ActorsE Chat would be considered the same" and should qualify as a major medium. However, the evidence does not establish that *ActorsE Chat* enjoys an audience comparable to that of a major network television show. Based on the limited information provided, it appears that its 1500+ episodes have cumulatively garnered 7 million views over the course of its 10 seasons; the evidence does not establish that this is the typical viewership for any of its online video interviews or the associated articles. In order to show that actorsentertainment.com qualifies as a major medium in its online category, the Petitioner would need to submit comparative website statistics. The information provided at the time of filing, showing an "Alexa Rank" of 4,967,327, does not support the Petitioner's claim that actorsentertainment.com is a major medium. The Petitioner did not provide other comparative data showing this website's ranking in relation to similar websites.

With respect to the article published in [redacted] magazine, the Petitioner reiterates on appeal that she has been unable to obtain evidence regarding the magazine's circulation or distribution in relation to other, similar publications. She provides the resume for the author who wrote the article about her and asserts that since the author is a paid professional writer, the article qualifies as a "professional publication." Her argument that any article written by a professional writer is a "professional publication" is not persuasive. A professional publication is typically one which has members of a specific profession as its target audience and would include, for example, a scientific journal. The limited evidence in the record regarding [redacted] does not establish that it qualifies as a professional, major trade publication or other major medium.

The Petitioner submitted several articles from [redacted] a daily newspaper, but the articles are not about her and relating to her work. A 2011 article titled [redacted] [redacted] is an interview with [redacted] the Petitioner's co-star in the movie [redacted]. This article includes one sentence about the Petitioner, noting has a lead role in this movie and was formerly a [redacted] at [redacted]'s [redacted] station. She is not otherwise mentioned in the three-page article, which is about [redacted] rather than about her.

Other articles from [redacted] date from the Petitioner's tenure as an [redacted] [redacted]. A 1999 article titled [redacted] (from the newspaper's fashion section) is limited to a photograph of the Petitioner, with a caption that identifies where she bought her outfit and how much she paid for it. Two articles published in 2000 are about The [redacted]'s move to a new studio. One article includes a photograph of the Petitioner and her [redacted] but she is only briefly mentioned in the body of the article. The other article is about a party held to celebrate the opening of the new studio and appeared in the newspaper's Food section; the Petitioner appears in a captioned photograph. A photocopy of a clipping from another article titled [redacted] [redacted] is largely illegible but appears to include a photograph of the Petitioner

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professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

identifying her as a [REDACTED] A 1998 clipping from the “Letters” section of the newspaper includes a photograph of the Petitioner identifying her as a [REDACTED] but there is no accompanying article. None of the referenced articles or captioned photographs qualify as published material “about” the Petitioner and relating to her work. Articles that are not about a petitioner do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).<sup>2</sup> Further, several of the newspaper clippings have only handwritten notations identifying the date of publication and identifying the source of the article as [REDACTED]; this required information is not identified on the copied portion of the newspaper itself.

Finally, the Petitioner submitted a clipping of a newspaper article titled [REDACTED] [REDACTED] which is about the new ownership of the [REDACTED] and its rebranding as [REDACTED]. The article discusses the Petitioner’s move to the [REDACTED]. However, the article does not include the date or title of the publication or identify the author of the article as required by the regulation. As with several of the other articles attributed to [REDACTED] [REDACTED] the date of publication and [REDACTED] have been handwritten on the provided photocopy.

The Petitioner also provided several articles published by [REDACTED]. A 1997 article titled [REDACTED] [REDACTED] includes two photographs of the Petitioner identifying her as [REDACTED] but the accompanying article, only a portion of which is provided, does not mention her and is not about her. A 1998 article titled [REDACTED] [REDACTED] is also about [REDACTED]. It mentions the Petitioner in a photo caption and notes that she would be [REDACTED] but the article is about changes at the TV station and was not written about her.

The Petitioner also provided evidence that she has appeared in [REDACTED], which is described on its cover as [REDACTED]. One article from the Winter 2002 edition provided coverage of the 21<sup>st</sup> [REDACTED] Auction and includes a photograph of the Petitioner with a caption identifying her as “celebrity auctioneer.” A 2000 article titled [REDACTED] [REDACTED] is about the new ownership of the [REDACTED] station. The Petitioner did not provide the complete article and she is not mentioned in the portion provided. She appears in a captioned photograph.

For the reasons discussed, the record does not establish that the articles that appeared in the publications [REDACTED], [REDACTED] and [REDACTED] are about the Petitioner. Further, several of the copies provided are lacking certain elements required by the regulation, including the date, title and/or author of the material. Nevertheless, we have also considered the Petitioner’s claims that these publications qualify as major media. She asserts that both [REDACTED] and [REDACTED] [REDACTED] are owned by “one of the top leading daily newspaper ownership groups in Canada” and she compares their respective current circulation figures to those of the top 10 U.S. newspapers (as of 2020). She has not provided evidence regarding their respective circulation rankings among Canadian daily newspapers and her claims that [REDACTED] publications should be considered “major media” because [REDACTED] are not persuasive. She also emphasizes that [REDACTED]

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<sup>2</sup> See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (providing that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

magazine “is distributed as an insert in the full circulation of Canada’s largest newspaper, [redacted] [redacted] There is evidence supporting that [redacted] qualifies as major media in Canada, but as noted, the submitted articles from [redacted] did not satisfy the other requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Therefore, for the reasons discussed, the Petitioner did not establish that she meets this criterion.

*Evidence of the individual’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions, but that they have been of major significance in the field. For example, a Petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

The Petitioner did not claim to meet this criterion at the time of filing. However, in response to the Director’s request for evidence (RFE), she stated that she “created a TV Reality Series called [redacted] [redacted] in 2017 and later teamed up with producer [redacted] and director [redacted] in [redacted] 2019 to further develop and produce the show, which would see me as the executive producer, original concept, and main host/performer.” The Petitioner explains that the show concept would have been presented to potential buyers/distributors at the [redacted] pitch event in 2020 but notes that the event was canceled due to the Covid-19 pandemic. The record contains evidence related to the show, including a synopsis, a budget (drafted November 2019 with a projected start date of March 2021), a co-production contract, and an IMDb page. The Petitioner emphasizes that the producers and directors continue to work on the show’s development.

In evaluating this criterion, the Director emphasized that the show is still in development, would not air until 2021 at the earliest, and therefore could not establish the Petitioner’s eligibility as of the date of filing. The Director also observed that the Petitioner did not demonstrate how her work on this project qualifies as an original contribution of major significance in the performing arts. Finally, the Director questioned how the Petitioner’s proposed role as the host of this show would be “germane to [her] achievements as an actress.”

On appeal, the Petitioner states that the [redacted] concept is original and emphasizes that she is credited as its creator. With respect to the Director’s assertion that her prospective role as host of the show would not be “germane,” she emphasizes that it was her role as a [redacted] that initially qualified her for entry to ACTRA (Canada’s union for professionals working in movies and television) and asserts that a host, like an actor, is a performing artist. She acknowledges that the show would not be scheduled to air prior to 2021, but notes that the concept, budget, and co-production agreement were in place prior to the filing of the petition. Finally, in response to the Director’s determination that the Petitioner did not establish how her show concept is a contribution of major significance to the performing arts field, she states that “[s]ubmitting the budget is quantitative proof of the impact the show would have on the US economy and especially for others in my field of endeavor who would obtain work and income from this project.” She asserts that she submitted

evidence that the show will make “a significant contribution to the performing arts, the US economy, American families and the United States as a whole.”

While we agree with the Petitioner that her proposed hosting role can be deemed to fall within her area of expertise in the performing arts, her other arguments with respect to this criterion are not persuasive. The evidence supports her claim that the show concept, proposed budget and co-production agreement for [ ] existed at the time the petition filed in December 2019. However, none of this evidence is sufficient to establish the “major significance” of a television series that has not yet found a distributor, filmed an episode, or aired before a viewing audience. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). For the purposes of meeting this criterion, she must provide evidence of an original contribution or contributions that have already been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. She has not established that her show concept for [ ] [ ] has had this impact and her projections regarding its potential artistic and economic impact are not sufficient to meet her burden.

Accordingly, the Petitioner has not established that she meets this criterion.

*Evidence of the display of the individual’s work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)*

The Director emphasized that this criterion is “limited to the visual arts.” We disagree with the Director’s interpretation that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner’s own work product and that the venues at which the individual’s work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).<sup>3</sup> As such, certain exhibitions or showcases featuring the work of performing artists may meet the plain language of this regulation.

Here, the record reflects that the Petitioner was credited with a significant role in the 2010 Canadian film [ ] which was screened at several film festivals including the [ ] [ ] Film Festival and [ ] Film Festival. In contrast to commercial movie releases, a given film festival may select films for screening based on their artistic merits and thus may be deemed an exhibition or showcase of the work of the artists involved. Based on the evidence submitted regarding the screening of [ ] at film festivals, we conclude that the Petitioner has satisfied this criterion.

*Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)*

For the purposes of this criterion, A leading role should be apparent by its position in the overall organizational hierarchy and through the role’s matching duties. A critical role should be apparent

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<sup>3</sup> See also USCIS Policy Memorandum PM 602-0005.1, *supra* at 9-10 (stating that officers should use the common dictionary definitions of “exhibition” and “showcase” in evaluating this criterion).

from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Director acknowledged that the Petitioner claimed eligibility under this criterion based on her performances in television shows, movies and a miniseries and discussed several of the recommendation letters she provided. However, he determined that the evidence did not establish her leading role or demonstrate that her performances contributed in a way that was of significant importance to the outcome of a studio or production company.

On appeal, the Petitioner asserts that she performed "leading and critical roles for the biggest television shows currently on air" in reference to her single episode appearances on award-winning series [redacted] [redacted] [redacted] and [redacted]. She also emphasizes that she was cast in critical roles in several made-for-television movies that appeared on [redacted] network, in an episode of the Emmy-nominated miniseries [redacted] on the [redacted] Channel, in the [redacted] award winning [redacted] movie [redacted] and in [redacted] an official selection of several film festivals.

The regulation requires a Petitioner's role to be leading or critical "for organizations or establishments," and the Petitioner has not established that any of these productions themselves constitute organizations or establishments. Therefore, even if we determined that she held a leading or critical role for a distinguished production, additional evidence would be required to meet the requirements of this criterion.

As noted by the Director, the Petitioner also submitted letters from representatives of production companies and other organizations to establish that she meets this criterion. The letters, however, do not establish that she held a leading or critical position for these organizations.<sup>4</sup> [redacted] vice president of [redacted] mentions the Petitioner's roles in the [redacted] movie [redacted] and in the [redacted] movie [redacted] and notes that he produced both movies for [redacted]. While he asserts that the Petitioner's performances in these movies were critical to the individual productions, he does not indicate whether or how she served in a critical role for [redacted]. The Petitioner subsequently submitted an updated letter from [redacted] that was identical to the first, but included a statement that the Petitioner's "performances have contributed greatly to the success of [redacted] in garnering the necessary investment dollars through her popularity as a talented actress whose performances consistently resonate with, and draw, a worldwide audience." We agree with the Director's determination that these general assertions are not substantiated in the record and are insufficient on their own to demonstrate the Petitioner's leading or critical role with [redacted]. The record does not include, for example, evidence that links the Petitioner's attachment to a [redacted] production with a large investment or other demonstrable evidence of her impact on the company's finances.

We have also considered a letter from director and producer [redacted] who state that he worked with the Petitioner on an episode of [redacted] documentary series [redacted] for [redacted] Channel. He praises her "outstanding performance" and asserts that it contributed to the critical and

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<sup>4</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).



commercial success of the production. He also refers to [redacted] as “an acclaimed production company.” But [redacted] does not claim to be a representative of [redacted] or [redacted] Channel and his letter does not establish how the Petitioner’s role in an episode of [redacted] was leading or critical to either of those organizations.

[redacted] President/Executive Producer of [redacted], also provided a letter in support of the petition. He states that his company cast the Petitioner in “important and critical roles” in numerous productions including [redacted], [redacted], [redacted], [redacted] and [redacted], a 2014 [redacted] movie. He addresses [redacted]’s distinguished reputation and asserts that the network approved of casting the Petitioner in [redacted] because of her talent and proven versatility. While [redacted] states that he has worked with the Petitioner on eight productions, he does not state how her involvement on these projects has impacted the activities of [redacted] in a way that is commensurate with performing in a leading or critical role with that organization. Nor does his letter establish that he is able to speak to the Petitioner’s leading or critical role for [redacted]

The Petitioner also submitted a letter from [redacted] who indicates that she produced the Canadian reality [redacted] series [redacted] for [redacted]. The record reflects that the Petitioner hosted this show, which aired nationwide in Canada on [redacted] for two seasons (2004 to 2005). [redacted] states that the effect of the Petitioner’s work “on sales” was “measurable” and noted that “we were able to track consumer response from week to week.” [redacted] states that “as a direct result of her participation on the show” the Petitioner “had a substantial influence on [redacted] (a Canada-based home improvement product retailer), as well as on the show’s sponsors, including [redacted] and [redacted]. While [redacted] appears to be in a position to discuss whether the Petitioner held a leading or critical role with [redacted], she does not provide sufficient detail to establish that the Petitioner held such a role, nor does the record contain evidence of [redacted] distinguished reputation. The Petitioner has not submitted letters from [redacted] or from the sponsors mentioned by [redacted] explaining how her role as host of [redacted] was leading or critical for any of those organizations.

On appeal, the Petitioner provides evidence of [redacted]’s 2004 purchase of another building supplies company for \$100M and states that “I argue that the show and my role on the show was a significant contribution to [redacted]’s earning muscle to be able to make such a huge acquisition.” She also emphasizes that [redacted] was eventually sold to [redacted] in 2016 and asserts that [redacted] was a large part of the attraction for the sale as it enhanced [redacted] as a “well-known brand.” As noted, the Petitioner does not offer a letter from a representative of [redacted], or its successor, or any evidence other than [redacted]’s letter, in support of her claims that her hosting role was critical to the [redacted] organization as a whole.

The Petitioner also provided a letter from [redacted] a general sales manager with [redacted] and former chairperson of the [redacted]. He states that he invited the Petitioner to serve on the charity’s board and notes that during her association, “the organization reached record donations.” [redacted] expresses that he is “confident that her participation and reputation assisted greatly to that record.” On appeal, the Petitioner supplements the record with additional evidence of her involvement in [redacted] charitable events, mostly during her tenure as [redacted]. She has not established that her involvement with these

organizations and events meets all elements of this criterion and, as noted by the Director, these activities do not appear to reflect her achievements as a performing artist.

The Petitioner also provided a letter from [redacted] Head of International Sales for [redacted] a French film company. She states that, from 2016 through 2019, the Petitioner “has been an essential part of our entertainment team for the critical sales and marketing of [redacted] offerings to the international buyers that attend the [redacted] in Santa Monica, CA in November.” [redacted] refers to the Petitioner as a “vital team member” and credits her with responsibility for “many various and demanding tasks and responsibilities that enabled us to work smoothly and supported our sales team in the challenging tasks of sales and marketing for France’s largest film producer and distributor.” We agree with the Director’s determination that [redacted] description of the sales support duties performed by the Petitioner during the annual [redacted] [redacted] event does not establish how she serves in a leading or critical role to the [redacted] organization as a whole.

Finally, the Petitioner emphasizes that she submitted 11 reference letters from fellow actors and industry professionals who attest to her achievements and requests that they be reviewed under this criterion as “comparable evidence.” The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to a petitioner’s occupation. A petitioner should explain why she has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3), as well as why the evidence she has included is “comparable” to that required.<sup>5</sup> General assertions that any of the ten objective criteria do not readily apply to an occupation are not probative. Similarly, claims that USCIS should accept recommendation letters as comparable evidence are not persuasive.<sup>6</sup> Here, the Petitioner did not demonstrate why an actor cannot offer evidence that meets at least three criteria. In fact, she has consistently claimed that she can meet as many of seven of the ten criteria. We note that we have considered reference letters that contain information relevant to specific criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

For the reasons discussed, the Petitioner has not established that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

*Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

To satisfy the requirements of this criterion, the Petitioner must establish that she has received a high salary, or other significantly high remuneration, based on a comparison with others in her field in similar positions and geographic locations.<sup>7</sup>

The Petitioner provided a copy of her 2018 Canadian tax return,<sup>8</sup> some of her IRS Forms W-2 for 2018 and 2019, evidence of contracts and payments she received for work in individual television and

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<sup>5</sup> See also USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 11 (noting that it is the petitioner’s burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high).

<sup>8</sup> This document shows that she earned total income of \$80,761.09 (Canadian), most of which was received as “lump-sum payments” reported on one or more Forms T4A, copies of which have not been provided.

movie projects, and evidence of residuals payments made to her. Her claim that she has commanded a high salary is primarily based on the hourly or daily wage she has received for her work on certain projects. The record does not contain evidence of her overall salary and other remuneration from all sources for any given year, nor is it clear based on the evidence submitted how frequently she is engaged to work on a project-by-project basis. Many of the projects documented in the record through contracts or deal memos required a short commitment ranging from one day to one week.

The Petitioner provided comparative salary data from several sources, including: *Payscale*, which shows an average actor/actress hourly pay of \$19.95 and a 90th percentile wage of \$99.43; the Department of Labor's Foreign Labor Certification (FLC) Online Wage Library, which shows a Level 4 hourly wage of \$48.08 for actors in the [redacted] area; and, the Bureau of Labor Statistics (BLS), which shows that actors in the United States earn a mean hourly wage of \$29.14, with the 90th percentile earning at least \$60.41.<sup>9</sup> In determining that the Petitioner does not meet this criterion, the Director noted that the provided FLC Level 4 and *Payscale* 90th percentile hourly wages amount to annual salaries of over \$100,000 and over \$200,000 respectively, and that the Petitioner had not established that her earnings have reached that level in an given year.

The Petitioner also provided an online article titled "What are the Typical Starting Average Salaries for an Actor?", published by the *Houston Chronicle* in 2018. The article summarizes 2016 BLS salary data for actors, but also includes separate sections addressing the salaries paid to movie and television actors, noting that starting salaries for such actors "are defined by [SAG-AFTRA]." According to this article, the minimum salary for a television or movie actor hired for one day is \$933 and those hired for one week earn \$3,239 (as of 2016). The record also includes a 2009 article from *The Toronto Star* which provides some average annual income figures for Canadian actors, but does not address hourly, daily or weekly rates set by ACTRA for television and movie actors. Further, the record contains no recent evidence regarding salaries of actors in Canada that could serve as a basis for comparison with the income figures reported on the Petitioner's 2018 Canadian tax return.

Because the Petitioner is a member of SAG-AFTRA and ACTRA working in film and television roles, the salary information she provided from Department of Labor and *Payscale*, which appear to include all actors, may not allow a meaningful comparison of her earnings "in relation to others in the field." While SAG-AFTRA members may generally earn higher salaries compared to other actors, it is reasonable to compare her earnings to that of other professional movie and television actors whose pay is dictated by this union scale. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); see also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Based on the evidence of payments she received for individual projects, the Petitioner has not established that she has commanded a high salary compared to other television and movie actors. She provided a copy of her deal memo for the [redacted] motion picture [redacted] indicating that she was guaranteed compensation at "SAG Scale \$3,320 per week +10%" for a guaranteed work period

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<sup>9</sup> On appeal, the Petitioner also submits 2020 salary data for actors/performers from *Salary.com*.

of one week for her role as [REDACTED]”<sup>10</sup> We cannot determine based on the evidence submitted that earning 10% above the standard salary set by SAG-AFTRA amounts to a “high salary” in relation to others. The record reflects that the Petitioner was paid at or just above the standard SAG “day player” rate for her appearances in the television series [REDACTED] and [REDACTED] and “SAG scale” for her roles in commercials for [REDACTED] and [REDACTED]. As noted, while the Petitioner submitted various forms of evidence in support of this criterion, the record does not clearly show her total salary or total remuneration for her work as an actor in any given year. Based on her hourly or daily earnings as documented in the record, she has not established that she commands a high salary in comparison to other movie and television actors.

With respect to her work in Canada, the Petitioner provided evidence that she was paid “ACTRA double scale” for her services as the host of the second season of the reality [REDACTED] series [REDACTED] in 2005 and for one day of shooting for an [REDACTED] video in 2012. However, there is insufficient evidence demonstrating that this constitutes a “high salary” for a professional host or actor in Canada. As noted, the supporting evidence related to salaries for Canadian actors is limited to the above-referenced 2009 *Toronto Star* article.

Finally, while the record contains evidence that the Petitioner has received additional remuneration for some of her work in the form of residual payments, she has not provided supporting evidence to establish that such remuneration has been “significantly high” when compared to the residual payments that others in the field receive, or otherwise shown that her total remuneration is significantly high.

For the reasons discussed, the Petitioner has not established that she meets this criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.* 8 C.F.R. § 204.5(h)(3)(x)

This criterion focuses on volume of sales and box office receipts as a measure of a petitioner’s commercial success in the performing arts. The evidence must show that the volume of sales and box office receipts reflect the individual’s commercial success relative to others involved in similar pursuits in the performing arts.<sup>11</sup> Fulfilling the criterion is not simply a matter of demonstrating credited involvement in a commercially successful film or show.

The Petitioner asserts that she meets this criterion based on the commercial success of the motion picture [REDACTED] which achieved \$5 million in receipts in its first week of theatrical release and \$12 million in [REDACTED] overall.<sup>12</sup> She also emphasizes the ratings success of the [REDACTED] television movie [REDACTED] pointing to a press release published by *Zap2It*, which indicates that the movie was viewed by 3.4 million viewers and was one of the most watched TV movies of the 2010/2011 season among female viewers ages 12-34. Finally, on appeal, she submits evidence related to DVD sales for the movie [REDACTED], in which she played the role of [REDACTED]. An article

<sup>10</sup> A letter the executive producer of [REDACTED] states that the Petitioner was paid \$3,652 for a single day of work on the film, which is not consistent with the terms of the deal memo specifying that she was paid at the SAG weekly rate.

<sup>11</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.

<sup>12</sup> On appeal, the Petitioner submits an article from [www.boxofficemojo.com](http://www.boxofficemojo.com) titled “[REDACTED] Box Office for 2018” which ranks [REDACTED] at number 46 out of 512 movies released in [REDACTED] during the 2018 calendar year.

published by the-numbers.com in October 2009 indicates that the DVD sold 95,000 units (\$1.42 million) in its first week of release for a tenth-place finish on “the DVD sales chart.”

Even if we concluded based on this evidence that the Petitioner has established the commercial success of one or more of these projects, it is her burden to establish that the box office receipts and television ratings reflect her *individual* success in relation to other performing artists and she has not provided sufficient evidence to meet this burden. She played small roles as a [redacted] in both [redacted] and [redacted]. She has not submitted media coverage, reviews, promotional materials, or other evidence that associates either movie’s box office or sales results with her involvement in the project.

While the record reflects that the Petitioner was cast in [redacted] as the mother of one of the main teen characters, it does not include independent evidence demonstrating that the ratings success of the movie can be attributed to her inclusion in the cast. The Petitioner provided evidence that several actors who appeared in the movie received award nominations for their performances, but the Petitioner was not among them, nor is she mentioned in the submitted reviews or other promotional materials about the movie. We acknowledge that [redacted], a Vice President with [redacted] and the producer of [redacted] states in his letter that the Petitioner’s “beautiful and critical performance as [redacted] was, without question, instrumental to the critical acclaim and commercial success [redacted] achieved,” but he does not elaborate and this general statement is insufficient to establish that all elements of this criterion have been met.

The Petitioner claims on appeal that the Director should have considered the critical success of her film and television projects in evaluating whether she satisfied this criterion. As noted by the Director in his decision, the plain language of this criterion focuses on *commercial* successes based on box office receipts and sales; it provides no basis for evaluating *critical* acclaim or success in the performing arts in the alternative.

Accordingly, the Petitioner did not establish that she meets this criterion.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner has previously been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. The prior nonimmigrant approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. An immigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. 8 C.F.R. § 103.2(b)(16)(ii).

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 597 (Comm’r 1988); *see also Sussex Eng’g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Nor are we bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*3 (E.D. La. 2000), *aff’d*, 248 F.3d 1139 (5th Cir. 2001).

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage at very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.